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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,667	01/27/2004	Torrence Anderson	1251.212	3021
21917	7590	10/31/2005	EXAMINER	
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			PUROL, SARAH L	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/766,667	ANDERSON, TORRENCE	
	Examiner	Art Unit	
	Sarah Purol	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 August 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

OFFICE ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Felsenhal 6,604,473 in view of Carter, Sr. et al. 2,478,458. Falsenthal teaches the devices claimed best seen in Figure 1, absent the drawer frame member slidably secured to second attachment tubes. Carter teaches a drawer frame member (see element 42) secured to attachment tubes (see element 24). To modify Felsenthal so that the flexible carriers (see 18) are slidably supported on the frame as taught by Carter for the purpose of providing easier access to the flexible carriers would have been obvious for one having ordinary skill in the art at the time of the invention. The number of shelves (for the purpose of holding more articles), the specific means for attaching the flexible carriers to the frame (for the purpose of ease of removal), the manner in which the cross bar members are attached to the frame (rivet, bolt, etc....) would have been matters of choice of well known expedients in the art equally interchangeable and mechanically equivalent used and know by those of ordinary skill in the rack and shelving art. Note also the auxiliary brackets at 28 of Felsenthal for holding various articles. Note also casters 24.

RESPONSE TO APPLICANT'S REMARKS

Art Unit: 3634

On page 17 of applicant's remarks he asserts that none of the cited prior art teach or suggest all of the claimed limitations. Applicant's attention is drawn to the fact that not a single reference was relied upon to teach or suggest all of the claimed limitations but rather a combination of two references was relied upon and a 35 USC 103(a) rejection was made.

On page 18 of applicant's remarks, he asserts that the examiner does not cite any text of Carter et al. to support the motivation. It is not incumbent upon the examiner to cite text from a reference in order to support motivation. The examiner has provided the motivation "To modify Felsenthal so that the flexible carriers (see 18) are slidably supported on the frame as taught by Carter for the purpose of providing easier access to the flexible carriers would have been obvious for one having ordinary skill in the art at the time of the invention."

On page 19 of applicant's remarks, he questions why one of ordinary skill in the art would attach the steel bars (24) of Carter et al. to the middle frame 16 of Felsenthal. The examiner has stated in the motivational statement this is done for the purpose of slidably supporting the trays for providing easier access to items stored thereon. The applicant further asserts this would be unsatisfactory for it's intended purpose. The examiner disagrees. Attaching steel bars to the inside of the middle frame would in no way prohibit adjustability.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Purol whose telephone number is 571-272-6834. The examiner can normally be reached on Mon. Tue. Thurs. For general questions relating to this application please e-mail the examiner at Sarah.Purol@USPTO.GOV.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Application/Control Number: 10/766,667
Art Unit: 3634

Page 5

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the
Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sarah Purol
Primary Examiner
AU 3634